

AMENDED IN SENATE APRIL 12, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 720

Introduced by Senator Kuehl

February 22, 2005

An act to amend Section 1218 of the Code of Civil Procedure, to amend Section 6380 of the Family Code, and to amend Section 136.2 of the Penal Code, relating to court orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 720, as amended, Kuehl. Court orders.

(1) Existing law provides specified procedures to initiate and pursue contempt orders.

This bill would authorize a district attorney or city attorney to initiate and pursue a court action for contempt against a party for failing to comply with a court order entered pursuant to the Domestic Violence Protection Act. *The bill would require any attorney's fees and costs ordered against a party in contempt of the above provision to be paid to the Office of Emergency Services for the purpose of funding domestic violence shelter service providers.*

(2) Existing law requires the court to transmit data to law enforcement personnel related to certain protective orders.

This bill would further require the court to similarly transmit data related to any protective order issued, modified, extended, or terminated pursuant to specified provisions of the Family Code.

(3) Existing law provides a mechanism whereby the court may issue a protective order.

This bill would make clarifying changes with regard to that authority, specifically with respect to orders protecting victims of violent crime from all contact by a defendant.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1218 of the Code of Civil Procedure is
2 amended to read:
- 3 1218. (a) Upon the answer and evidence taken, the court or
4 judge shall determine whether the person proceeded against is
5 guilty of the contempt charged, and if it be adjudged that he or
6 she is guilty of the contempt, a fine may be imposed on him or
7 her not exceeding one thousand dollars (\$1,000), or he or she
8 may be imprisoned not exceeding five days, or both. In addition,
9 a person who is subject to a court order as a party to the action,
10 or any agent of this person, who is adjudged guilty of contempt
11 for violating that court order may be ordered to pay to the party
12 initiating the contempt proceeding the reasonable attorney's fees
13 and costs incurred by this party in connection with the contempt
14 proceeding.
- 15 (b) No party, who is in contempt of a court order or judgment
16 in a dissolution of marriage or legal separation action, shall be
17 permitted to enforce such an order or judgment, by way of
18 execution or otherwise, either in the same action or by way of a
19 separate action, against the other party. This restriction shall not
20 affect nor apply to the enforcement of child or spousal support
21 orders.
- 22 (c) In any court action in which a party is found in contempt of
23 court for failure to comply with a court order pursuant to the
24 Family Code, the court shall order the following:
- 25 (1) Upon a first finding of contempt, the court shall order the
26 contemner to perform community service of up to 120 hours, or
27 to be imprisoned up to 120 hours, for each count of contempt.
- 28 (2) Upon the second finding of contempt, the court shall order
29 the contemner to perform community service of up to 120 hours,
30 in addition to ordering imprisonment of the contemner up to 120
31 hours, for each count of contempt.
- 32 (3) Upon the third or any subsequent finding of contempt, the
33 court shall order both of the following:

1 (A) The court shall order the contemner to serve a term of
2 imprisonment of up to 240 hours, and to perform community
3 service of up to 240 hours, for each count of contempt.

4 (B) The court shall order the contemner to pay an
5 administrative fee, not to exceed the actual cost of the
6 contemner's administration and supervision, while assigned to a
7 community service program pursuant to this paragraph.

8 (4) The court shall take parties' employment schedules into
9 consideration when ordering either community service or
10 imprisonment, or both.

11 (d) Pursuant to Section 1211 and this section, a district
12 attorney or city attorney may initiate and pursue a court action
13 for contempt against a party for failing to comply with a court
14 order entered pursuant to the Domestic Violence Protection Act
15 (Division 10 (commencing with Section 6200) of the Family
16 Code). *Any attorney's fees and costs ordered by the court
17 pursuant to subdivision (a) against a party who is adjudged
18 guilty of contempt under this subdivision shall be paid to the
19 Office of Emergency Services' account established for the
20 purpose of funding domestic violence shelter service providers
21 pursuant to subdivision (f) of Section 13823.15 of the Penal
22 Code.*

23 SEC. 2. Section 6380 of the Family Code is amended to read:

24 6380. (a) Each county, with the approval of the Department
25 of Justice, shall, by July 1, 1996, develop a procedure, using
26 existing systems, for the electronic transmission of data, as
27 described in subdivision (b), to the Department of Justice. The
28 data shall be electronically transmitted through the California
29 Law Enforcement Telecommunications System (CLETS) of the
30 Department of Justice by law enforcement personnel, or with the
31 approval of the Department of Justice, court personnel, or
32 another appropriate agency capable of maintaining and
33 preserving the integrity of both the CLETS and the Domestic
34 Violence Restraining Order System, as described in subdivision
35 (e). Data entry is required to be entered only once under the
36 requirements of this section, unless the order is served at a later
37 time. A portion of all fees payable to the Department of Justice
38 under subdivision (a) of Section 1203.097 of the Penal Code for
39 the entry of the information required under this section, based
40 upon the proportion of the costs incurred by the local agency and

1 those incurred by the Department of Justice, shall be transferred
2 to the local agency actually providing the data. All data with
3 respect to criminal court protective orders issued, modified,
4 extended, or terminated under subdivision (g) of Section 136.2 of
5 the Penal Code, and all data *filed with the court* with respect to
6 protective orders, including their issuance, modification,
7 extension, or termination, to which this division applies pursuant
8 to Section 6221, shall be transmitted by the court or its designee
9 within one business day to law enforcement personnel by either
10 one of the following methods:

11 (1) Transmitting a physical copy of the order to a local law
12 enforcement agency authorized by the Department of Justice to
13 enter orders into CLETS.

14 (2) With the approval of the Department of Justice, entering
15 the order into CLETS directly.

16 (b) Upon the issuance of a protective order to which this
17 division applies pursuant to Section 6221, or the issuance of a
18 temporary restraining order or injunction relating to harassment
19 or domestic violence pursuant to Section 527.6 or 527.8 of the
20 Code of Civil Procedure, or the issuance of a criminal court
21 protective order under subdivision (g) of Section 136.2 of the
22 Penal Code, or the issuance of a juvenile court restraining order
23 related to domestic violence pursuant to Section 213.5, 304, or
24 362.4 of the Welfare and Institutions Code, or the issuance of a
25 protective order pursuant to Section 15657.03 of the Welfare and
26 Institutions Code, or upon registration with the court clerk of a
27 domestic violence protective or restraining order issued by the
28 tribunal of another state, as defined in Section 6401, and
29 including any of the foregoing orders issued in connection with
30 an order for modification of a custody or visitation order issued
31 pursuant to a dissolution, legal separation, nullity, or paternity
32 proceeding the Department of Justice shall be immediately
33 notified of the contents of the order and the following
34 information:

35 (1) The name, race, date of birth, and other personal
36 descriptive information of the respondent as required by a form
37 prescribed by the Department of Justice.

38 (2) The names of the protected persons.

39 (3) The date of issuance of the order.

40 (4) The duration or expiration date of the order.

1 (5) The terms and conditions of the protective order, including
2 stay-away, no-contact, residency exclusion, custody, and
3 visitation provisions of the order.

4 (6) The department or division number and the address of the
5 court.

6 (7) Whether or not the order was served upon the respondent.

7 (8) The terms and conditions of any restrictions on the
8 ownership or possession of firearms.

9 All available information shall be included; however, the
10 inability to provide all categories of information shall not delay
11 the entry of the information available.

12 (c) The information conveyed to the Department of Justice
13 shall also indicate whether the respondent was present in court to
14 be informed of the contents of the court order. The respondent's
15 presence in court shall provide proof of service of notice of the
16 terms of the protective order. The respondent's failure to appear
17 shall also be included in the information provided to the
18 Department of Justice.

19 (d) (1) Within one business day of service, any law
20 enforcement officer who served a protective order shall submit
21 the proof of service directly into the Department of Justice
22 Domestic Violence Restraining Order System, including his or
23 her name and law enforcement agency, and shall transmit the
24 original proof of service form to the issuing court.

25 (2) Within one business day of receipt of proof of service by a
26 person other than a law enforcement officer, the clerk of the
27 court shall submit the proof of service of a protective order
28 directly into the Department of Justice Domestic Violation
29 Restraining Order System, including the name of the person who
30 served the order. If the court is unable to provide this notification
31 to the Department of Justice by electronic transmission, the court
32 shall, within one business day of receipt, transmit a copy of the
33 proof of service to a local law enforcement agency. The local law
34 enforcement agency shall submit the proof of service directly
35 into the Department of Justice Domestic Violence Restraining
36 Order System within one business day of receipt from the court.

37 (e) The Department of Justice shall maintain a Domestic
38 Violence Restraining Order System and shall make available to
39 court clerks and law enforcement personnel, through computer
40 access, all information regarding the protective and restraining

1 orders and injunctions described in subdivision (b), whether or
2 not served upon the respondent.

3 (f) If a court issues a modification, extension, or termination of
4 a protective order, it shall be on forms adopted by the Judicial
5 Council of California and that have been approved by the
6 Department of Justice, and the transmitting agency for the county
7 shall immediately notify the Department of Justice, by electronic
8 transmission, of the terms of the modification, extension, or
9 termination.

10 (g) The Judicial Council shall assist local courts charged with
11 the responsibility for issuing protective orders by developing
12 informational packets describing the general procedures for
13 obtaining a domestic violence restraining order and indicating the
14 appropriate Judicial Council forms. The informational packets
15 shall include a design, that local courts shall complete, that
16 describes local court procedures and maps to enable applicants to
17 locate filing windows and appropriate courts, and shall also
18 include information on how to return proofs of service, including
19 mailing addresses and fax numbers. The court clerk shall provide
20 a fee waiver form to all applicants for domestic violence
21 protective orders. The court clerk shall provide all Judicial
22 Council forms required by this chapter to applicants free of
23 charge. The informational packet shall also contain a statement
24 that the protective order is enforceable in any state, as defined in
25 Section 6401, and general information about agencies in other
26 jurisdictions that may be contacted regarding enforcement of an
27 order issued by a court of this state.

28 (h) For the purposes of this part, “electronic transmission”
29 shall include computer access through the California Law
30 Enforcement Telecommunications System (CLETS).

31 (i) Only protective and restraining orders issued on forms
32 adopted by the Judicial Council of California and that have been
33 approved by the Department of Justice shall be transmitted to the
34 Department of Justice. However, this provision shall not apply to
35 a valid protective or restraining order related to domestic or
36 family violence issued by a tribunal of another state, as defined
37 in Section 6401. Those orders shall, upon request, be registered
38 pursuant to Section 6404.

39 SEC. 3. Section 136.2 of the Penal Code is amended to read:

1 136.2. Upon a good cause belief that harm to, or intimidation
2 or dissuasion of, a victim or witness has occurred or is
3 reasonably likely to occur, any court with jurisdiction over a
4 criminal matter may issue orders including, but not limited to, the
5 following:

6 (a) Any order issued pursuant to Section 6320 of the Family
7 Code.

8 (b) An order that a defendant shall not violate any provision of
9 Section 136.1.

10 (c) An order that a person before the court other than a
11 defendant, including, but not limited to, a subpoenaed witness or
12 other person entering the courtroom of the court, shall not violate
13 any provisions of Section 136.1.

14 (d) An order that any person described in this section shall
15 have no communication whatsoever with any specified witness
16 or any victim, except through an attorney under any reasonable
17 restrictions that the court may impose.

18 (e) An order calling for a hearing to determine if an order as
19 described in subdivisions (a) to (d), inclusive, should be issued.

20 (f) An order that a particular law enforcement agency within
21 the jurisdiction of the court provide protection for a victim or a
22 witness, or both, or for immediate family members of a victim or
23 a witness who reside in the same household as the victim or
24 witness or within reasonable proximity of the victim's or
25 witness' household, as determined by the court. The order shall
26 not be made without the consent of the law enforcement agency
27 except for limited and specified periods of time and upon an
28 express finding by the court of a clear and present danger of
29 harm to the victim or witness or immediate family members of
30 the victim or witness.

31 For purposes of this subdivision, "immediate family members"
32 include the spouse, children, or parents of the victim or witness.

33 (g) (1) Any order protecting victims of violent crime from all
34 contact by the defendant, or contact, with the intent to annoy,
35 harass, threaten, or commit acts of violence, by the defendant.
36 The court or its designee shall transmit orders made under this
37 subdivision to law enforcement personnel within one business
38 day of the issuance, modification, extension, or termination of
39 the order, pursuant to subdivision (a) of Section 6380 of the
40 Family Code. It is the responsibility of the court to transmit the

1 modification, extension, or termination orders made under this
2 subdivision to the same agency that entered the original
3 protective order into the Domestic Violence Restraining Order
4 System.

5 (2) Any order issued, modified, extended, or terminated by a
6 court pursuant to this subdivision shall be issued on forms
7 adopted by the Judicial Council of California and that have been
8 approved by the Department of Justice pursuant to subdivision (i)
9 of Section 6380 of the Family Code. However, the fact that an
10 order issued by a court pursuant to this section was not issued on
11 forms adopted by the Judicial Council and approved by the
12 Department of Justice shall not, in and of itself, make the order
13 unenforceable.

14 (3) Any person violating any order made pursuant to
15 subdivisions (a) to (g), inclusive, may be punished for any
16 substantive offense described in Section 136.1, or for a contempt
17 of the court making the order. A finding of contempt shall not be
18 a bar to prosecution for a violation of Section 136.1. However,
19 any person so held in contempt shall be entitled to credit for any
20 punishment imposed therein against any sentence imposed upon
21 conviction of an offense described in Section 136.1. Any
22 conviction or acquittal for any substantive offense under Section
23 136.1 shall be a bar to a subsequent punishment for contempt
24 arising out of the same act.

25 (h) (1) A person subject to a protective order issued under this
26 section shall not own, possess, purchase, receive, or attempt to
27 purchase or receive a firearm while the protective order is in
28 effect.

29 (2) The court shall order a person subject to a protective order
30 issued under this section to relinquish any firearms he or she
31 owns or possesses pursuant to Section 527.9 of the Code of Civil
32 Procedure.

33 (3) Every person who owns, possesses, purchases or receives,
34 or attempts to purchase or receive a firearm while the protective
35 order is in effect is punishable pursuant to subdivision (g) of
36 Section 12021 of the Penal Code.

37 (i) (1) In all cases where the defendant is charged with a
38 crime of domestic violence, as defined in Section 13700, the
39 court shall consider issuing the above-described orders on its
40 own motion. All interested parties shall receive a copy of those

1 orders. In order to facilitate this, the court's records of all
2 criminal cases involving domestic violence shall be marked to
3 clearly alert the court to this issue.

4 (2) In those cases in which a complaint, information, or
5 indictment charging a crime of domestic violence, as defined in
6 Section 13700, has been issued, a restraining order or protective
7 order against the defendant issued by the criminal court in that
8 case has precedence in enforcement over any civil court order
9 against the defendant.

10 (3) Custody and visitation with respect to the defendant and
11 his or her minor children may be ordered by a family or juvenile
12 court consistent with the protocol established pursuant to
13 subdivision (i).

14 (j) On or before January 1, 2003, the Judicial Council shall
15 promulgate a protocol, for adoption by each local court in
16 substantially similar terms, to provide for the timely coordination
17 of all orders against the same defendant and in favor of the same
18 named victim or victims. The protocol shall include, but shall not
19 be limited to, mechanisms for assuring appropriate
20 communication and information sharing between criminal,
21 family, and juvenile courts concerning orders and cases that
22 involve the same parties, and shall permit a family or juvenile
23 court order to coexist with a criminal court protective order
24 subject to the following conditions:

25 (1) Any order that permits contact between the restrained
26 person and his or her children shall provide for the safe exchange
27 of the children and shall not contain language either printed or
28 handwritten that violates a "no contact order" issued by a
29 criminal court.

30 (2) Safety of all parties shall be the courts' paramount
31 concern. The family or juvenile court shall specify the time, day,
32 place, and manner of transfer of the child, as provided in Section
33 3100 of the Family Code.

34 (k) On or before January 1, 2003, the Judicial Council shall
35 modify the criminal and civil court protective order forms
36 consistent with this section.

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**All matter omitted in this version of the bill
appears in the bill as introduced in Senate,
February 22, 2005 (JR11)**

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